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4 Attorneys for Defendants  
5 COSTCO WHOLESALE CORPORATION,  
6 HOMEDICS-U.S.A., INC. (erroneously sued and  
served herein as "U.S.A.-HoMEDICS, INC.") and  
TAYLOR PRECISION PRODUCTS, INC.



**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

19 The parties, by and through their respective counsel of record, hereby stipulate  
20 and respectfully request that the Court enter an order remanding the action captioned  
21 *Drake v. Costco Wholesale Corporation et. al.*, Case No. C 06 04682 JW (N.D.  
22 Cal.) to the Superior Court of the State of California for the County of Santa Cruz  
23 for further proceedings.

24 Plaintiff GINA DRAKE (“MS. DRAKE”) alleges that she suffered a  
25 laceration to her foot on 16 August 2005 .

26 This is a product liability action filed by plaintiff GINA DRAKE in the  
27 California state court based on an incident of 16 August 2005 in which she alleges  
28 that she was injured from the use of a glass scale distributed by defendant

1 HOMEDICS-U.S.A., INC. (“HOMEDICS”) that she purchased from defendant  
2 COSTCO WHOLESALE CORPORATION (“COSTCO”).

3 This is a diversity case removed pursuant to 28 USC 1332. The substantive  
4 law of the State of California is to be applied.

5 The following good cause exists for the Court to grant this Stipulation in its  
6 entirety:

7 The parties have agreed that due to the severity of the injuries and the on-  
8 going medical treatment by the plaintiff, that the interests of justice would be better  
9 served with the remand of the case so that the plaintiff may complete her medical  
10 treatment and the defendants have an opportunity to evaluate the injury. The parties  
11 have indicated their desire to submit this matter to mediation, but cannot proceed  
12 with meaningful discussions until the plaintiff’s medical treatment has been  
13 completed. The parties agree that the state court forum would be most amendable to  
14 such a resolution involving state court issues.

15 MS. DRAKE’S medical condition has recently and progressively deteriorated,  
16 such that it is presently uncertain as to the extent of her claimed injury and damages  
17 that are at issue in this case. Plaintiff is now claiming a number of worsening  
18 conditions, including severe and chronic neurological deficits and a severely  
19 compromised immune system. Her medical treatment is now aggressively treating  
20 different systemic problems, including RSD. Most recently, in the last few months,  
21 MS. DRAKE has commenced a new “experimental” type of treatment, including  
22 gamma globulin injections, in an attempt to boost her immune system. Each  
23 treatment costs \$40,000.00. She receives one treatment each month. Plaintiff has  
24 identified for the first time those doctors involved in the latest treatments.  
25 Defendants have not had an opportunity to examine the most recent records,  
26 including those evaluating her present condition. Her condition is not yet permanent  
27 and stationary. At that time, the extent of plaintiff’s medical condition will be ready  
28

1 for evaluation by the parties to this litigation and the court. This court has complete  
2 discretion to order this remand and no statement of reasons is required.

3 Dated: February\_\_\_\_\_, 2008

RICHARD E. DAMON, PC

5 By: \_\_\_\_\_

6 Richard E. Damon  
7 Attorneys for Plaintiff  
8 GINA DRAKE

9 Dated: February 19, 2008

SHAW, TERHAR & LaMONTAGNE, LLP

10 By: /s/ John W. Shaw \_\_\_\_\_

11 John W. Shaw  
12 Attorneys for Defendant  
13 COSTCO WHOLESALE  
14 CORPORATION, HOMEDICS-  
15 U.S.A., INC. (erroneously sued and  
16 served herein as "U.S.A.-  
17 HoMEDICS, INC.") and TAYLOR  
18 PRECISION PRODUCTS, INC.

19 \*\*\* ORDER \*\*\*

20 The Court conducted a Preliminary Pretrial Conference on February 25, 2008. Counsel for  
21 Defendant was present; however, no one appeared on behalf of Plaintiff.

22 On August 1, 2006, this case was removed to this Court from Santa Cruz County Superior  
23 Court. (Docket Item No. 1.) The parties now request that this case be remanded back to state  
24 court, and they have filed a stipulation to that effect. (Docket Item No. 23.)

25 Title 28 U.S.C. §1447(c) provides, in relevant parts: A motion to remand the case on the basis  
26 of any defect other than lack of subject matter jurisdiction must be made within 30 days after the  
27 filing of the notice of removal under section 1446(a). If at any time before final judgment it  
appears that the district court lacks subject matter jurisdiction, the case shall be remanded.

28 The parties do not contend that the Court lacks subject matter jurisdiction over this case.  
Moreover, the parties have failed to make their request to remand on the basis of some other defect  
within the thirty days provided by statute. Rather, the parties seek remand based solely on their  
agreement that remand is in their best interests. The Court finds that the parties have not stated a  
basis under § 1447 upon which the Court may remand. Accordingly, the parties request to remand  
this case is DENIED.

In light of this Order, the parties shall appear for a Preliminary Pretrial Conference on **March  
10, 2008 at 10 a.m.** Failure to appear at this conference may result in sanctions and dismissal of  
the action for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

The parties shall file a Joint Preliminary Pretrial Statement by **March 3, 2008**.

Dated: February 26, 2008

  
JAMES WARE  
United States District Judge